

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Mortgage Broker License of:

No. 08F-089-SBD

3 **AMERICAN INVESTMENT GROUP, INC.**
4 **DBA MILITARY MORTGAGE, AND**
5 **MARK POTTINGER, PRESIDENT**
6 8204 N. 32nd Avenue
7 Phoenix, AZ 85051

**ORDER TO CEASE AND DESIST;
NOTICE OF OPPORTUNITY FOR
HEARING; CONSENT TO ENTRY OF
ORDER**

8 Respondents.

9 The Superintendent of Financial Institutions for the State of Arizona (the "Superintendent"),
10 makes the following Findings of Fact and Conclusions of Law and enters the following Order
11 pursuant to Arizona Revised Statutes ("A.R.S.") § 6-137.

12 Pursuant to Titles 6 and 41 of the Arizona Revised Statutes and Title 20, Chapter 4 of the
13 Arizona Administrative Code ("A.A.C."), Respondents are hereby notified that they are entitled to a
14 hearing to contest this Order. The Request for Hearing shall be filed with the Arizona Department of
15 Financial Institutions (the "Department") pursuant to A.R.S. § 6-137(D) within **thirty (30) days** of
16 service of this Order and shall identify with specificity the action or order for which review is sought
17 in accordance with A.R.S. § 41-1092.03(B).

18 Pursuant to A.R.S. §§ 41-1092.01(D) and 41-1092.03(B), any person may appear on his or
19 her own behalf or by counsel. If Respondents are represented by counsel, the information required
20 by A.R.S. § 41-1092.03(B) shall be included in the Request for Hearing. Upon the filing of a
21 Request for Hearing, the Department shall issue a Notice of Hearing scheduling the matter for
22 hearing in accordance with A.R.S. § 41-1092.05. **Persons with disabilities may request**
23 **reasonable accommodations such as interpreters, alternative formats, or assistance with**
24 **physical accessibility.** Requests for special accommodations must be made as early as possible to
25 allow time to arrange the accommodations. If accommodations are required, call the Office of
26 Administrative Hearings at (602) 542-9826.

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1 Respondents have the right to request an Informal Settlement Conference, pursuant to A.R.S.
2 § 41-1092.06, by filing a written request no later than **twenty (20) days** before the scheduled
3 hearing. The conference will be held within **fifteen (15) days** after receipt of your request. If an
4 Informal Settlement Conference is requested, a person with the authority to act on behalf of the
5 Department will be present (the "Department Representative"). Please note that in requesting an
6 Informal Settlement Conference, Respondents waive any right to object to the participation of the
7 Department Representative in the final administrative decision of this matter, if it is not settled. In
8 addition, any written or oral statement made by Respondents at such informal settlement conference,
9 including written documentation created or expressed solely for purposes of settlement negotiations,
10 are inadmissible in any subsequent administrative hearing. (See A.R.S. § 41-1092.06 for rules
11 regarding informal settlement conferences.) Conversely, any written or oral statement made by
12 Respondents outside an Informal Settlement Conference is not barred from being admitted by the
13 Department in any subsequent hearing. If Respondents do not request a hearing, this Order shall
14 become final.

15 If Respondents request a hearing, the purpose of the hearing shall be to determine if grounds
16 exist for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and
17 desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable
18 period of time prescribed by the Superintendent, to correct the conditions resulting from the
19 unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to
20 A.R.S. § 6-132; (3) the suspension or revocation of Respondents' license pursuant to A.R.S. § 6-905;
21 and (4) an order or any other remedy necessary or proper for the enforcement of statutes and rules
22 regulating mortgage brokers pursuant to A.R.S. §§ 6-123 and 6-131.

23 FINDINGS OF FACT

24 1. Respondent American Investment Group, Inc. ("AIG") is a Georgia corporation, doing
25 business as Military Mortgage, an Arizona Trade Name, and is authorized to transact business in
26 Arizona as a mortgage broker, license number MB 0905925, within the meaning of A.R.S. § 6-901,

1 *et seq.* The nature of AIG's business is that of making, negotiating, or offering to make or negotiate
2 a loans secured by Arizona real property within the meaning of A.R.S. § 6-901(6).

3 2. Respondent Mark Pottinger ("Mr. Pottinger") is the President of AIG. Mr. Pottinger is
4 authorized to transact business in Arizona as a mortgage broker within the meaning of A.R.S.
5 § 6-903(E).

6 3. A December 12, 2007 examination of AIG, conducted by the Department, revealed that
7 AIG and Mr. Pottinger:

8 a. Conducted mortgage broker activity at an unlicensed branch location at all material
9 times; specifically:

10 i. Respondents closed 30 loans totaling \$9,836,806.00 during 2007, while listing
11 their location, on all mortgage loan applications, at 1130 Hurricane Shoals,
12 Suite 1600, Lawrenceville, Georgia 30043. This location is their corporate
13 headquarters, but has not been a licensed branch in Arizona since December
14 22, 2004, when it was closed for non renewal. Respondents state that all loans
15 are processed at this location;

16 ii. Respondents' only licensed Arizona location, 8240 N. 32nd Avenue,
17 Scottsdale, Arizona 85051, is the residence of Respondents' responsible
18 individual, and no loans are originated or processed at this location; and

19 iii. Respondents' license incorrectly lists their Arizona location as Scottsdale,
20 Arizona, rather than correctly as Phoenix, Arizona;

21 b. Failed to conduct the minimum elements of reasonable employee investigations
22 before hiring employees, specifically:

23 i. Failed to collect and review all of the documents authorized by the
24 Immigration and Control Act of 1986 for three (3) employees;

25 ii. Failed to obtain a completed "I9" (Employment Eligibility Verification Form)
26 for three (3) employees;

- iii. Failed to obtain a completed and signed employment application before hiring at least three (3) employees;
 - iv. Failed to obtain a signed statement attesting to all of an applicant's felony convictions, including detailed information regarding each conviction, before hiring at least three (3) employees;
 - v. Failed to consult with the applicant's most recent or next most recent employer for three (3) employees;
 - vi. Failed to inquire regarding an applicant's qualifications and competence for the position for three (3) employees;
 - vii. Failed to obtain a credit report before hiring three (3) employees; and
 - viii. Failed to maintain employee files for any of its employees;
- c. Failed to reconcile and update on a monthly basis all records having more than ten (10) transactions in a calendar quarter, specifically:
- i. Failed to reconcile their checking account to the check register as required;
- d. Failed to comply with the disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated under these acts, specifically:
- i. Initial Truth in Lending statements were not completed correctly for four (4) borrowers;
 - ii. The Mortgage Servicing Transfer disclosure stated that Respondents are able to service loans when they cannot for one (1) borrower;
 - iii. The Truth in Lending statement was completed as a fixed rate loan when it was an adjustable rate loan for one (1) borrower;
 - iv. The Yield Spread Premium was not disclosed on the Good Faith Estimate for two (2) borrowers;

- 1 e. Failed to use a written fee/document agreement form as required, specifically:
- 2 i. Failed to use a written agreement for one (1) borrower; and
- 3 ii. Respondents currently do not use a written agreement;
- 4 f. Failed to maintain a record of all money received in connection with a mortgage loan,
- 5 specifically:
- 6 i. Respondents could not provide a record of money received; and
- 7 g. Failed to ensure that the Responsible Individual, Charmian Godfrey, maintained a
- 8 position of active management, specifically:
- 9 i. Respondents' responsible individual has failed to meet the requirements for
- 10 active management, as evidenced by the number of violations and the fact that
- 11 she did not know Respondents had closed any loans for the last two (2) years;
- 12 and
- 13 ii. Respondents have not paid the responsible individual for the last two years,
- 14 and they were unable to provide W-2 or payroll information regarding their
- 15 Responsible Individual.

16 LAW

17 1. Pursuant to A.R.S. §§ 6-901, *et seq.*, the Superintendent has the authority and duty to

18 regulate all persons engaged in the mortgage broker business and with the enforcement of statutes,

19 rules, and regulations relating to mortgage brokers.

20 2. By the conduct set forth in the Findings of Fact, AIG and Mr. Pottinger violated the

21 following:

- 22 a. A.R.S. §§ 6-903 and 6-904 by conducting mortgage broker activity at an unlicensed
- 23 branch location;
- 24 b. A.R.S. § 6-903(N) and A.A.C. R20-4-102 by failing to conduct the minimum
- 25 elements of reasonable employee investigations before hiring employees;
- 26 c. A.A.C. R20-4-917(C) by failing to reconcile and update on a monthly basis all

1 records having more than ten (10) transactions in a calendar quarter;

2 d. A.R.S. § 6-906(D) and A.A.C. R20-4-9127(B)(6)(e) by failing to comply with the
3 disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C.
4 §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C.
5 §§ 2601 through 2617), and the regulations promulgated under these acts;

6 e. A.R.S. § 6-906(C) by failing to use a written fee/document agreement form as
7 required;

8 f. A.A.C. R20-4-917(B)(2) by failing to maintain a record of all money received in
9 connection with a mortgage loan; and

10 g. A.R.S. § 6-903(E) and A.A.C. R20-4-102 by failing to ensure that the responsible
11 individual maintained a position of active management.

12 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order
13 pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and
14 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the
15 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
16 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
17 suspension or revocation of Respondents' license pursuant to A.R.S. § 6-905; and (4) an order or any
18 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage
19 brokers pursuant to A.R.S. §§ 6-123 and 6-131.

20 ORDER

21 1. AIG and Mr. Pottinger shall immediately stop the violations set forth in the Findings of
22 Fact and Conclusions of Law. AIG and Mr. Suarez:

23 a. Shall immediately cease conducting mortgage broker activity at an unlicensed branch
24 location;

25 b. Shall conduct the minimum elements of reasonable employee investigations before
26 hiring employees;

- 1 c. Shall reconcile and update on a monthly basis all records having more than ten (10)
2 transactions in a calendar quarter;
- 3 d. Shall comply with the disclosure requirements of Title I of the Consumer Credit
4 Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement
5 Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated
6 under these acts;
- 7 e. Shall use a written fee/document agreement when accepting documents from
8 borrowers;
- 9 f. Shall maintain a record of all money received in connection with a mortgage loan;
10 and
- 11 g. Shall ensure that the responsible individual maintains a position of active
12 management.


13 2. AIG and Mr. Pottinger shall immediately pay to the Department a civil money penalty in
14 the amount of **ten thousand dollars (\$10,000.00)**. AIG and Mr. Pottinger are jointly and severally
15 liable for payment of the civil money penalty.

16 3. The provisions of this Order shall be binding upon Respondents, their employees, agents,
17 and other persons participating in the conduct of the affairs of Respondents.

18 4. This Order shall become effective upon service, and shall remain effective and
19 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,
20 or set aside.

21 SO ORDERED this 3 day of March, 2008.

22 Felecia A. Rotellini
23 Superintendent of Financial Institutions

24 By 
25 Robert D. Charlton
26 Assistant Superintendent of Financial Institutions

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1 ORIGINAL of the foregoing filed this 3rd
day of March, 2008, in the office of:

2 Felecia A. Rotellini
3 Superintendent of Financial Institutions
4 Arizona Department of Financial Institutions
5 ATTN: Susan L. Longo
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

6 COPY mailed/delivered same date to:

7 Craig A. Raby, Assistant Attorney General
8 Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007

9 Robert D. Charlton, Assistant Superintendent
10 Chris Dunshee, Senior Examiner
11 Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

12 AND COPY MAILED SAME DATE by
13 Certified Mail, Return Receipt Requested, to:

14 American Investment Group, Inc.
15 dba Military Mortgage
c/o Mark Pottinger, President
8204 N. 32nd Avenue
16 Phoenix, AZ 85051

17 Mark Pottinger, President
18 American Investment Group, Inc.
dba Military Mortgage
8204 N. 32nd Avenue
19 Phoenix, AZ 85051

20 Mark Pottinger, President
21 American Investment Group, Inc.
1130 Hurricane Shoals Road, Suite 1600
Lawrenceville, GA 30043

22 National Registered Agents, Inc.
23 Statutory Agent For: American Investment
Group, Inc. dba Military Mortgage
24 638 N. Fifth Avenue
Phoenix, AZ 85003

25 Susan L. Longo
26 137717; PHX-AGN-2007-0095